



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

March 30, 2018

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Request of the Pennsylvania Public Utility Commission to Withdraw its
April 3, 2009 Motion for Reconsideration of the *TracFone Modification
Order* and the *Virgin Mobile ETC Forbearance Order*, at CC Docket
No. 96-45.

Dear Ms. Dortch:

Pursuant to Federal Communications Commission Rule 47 C.F.R. §§ 1.106
and 1.8, the Pennsylvania Public Utility Commission (Pa. PUC), through the enclosed
pleading, hereby requests withdrawal of its April 3, 2009 Motion for Reconsideration of
the *TracFone Modification Order* and the *Virgin Mobile ETC Forbearance Order*.¹

The Pa. PUC submitted the above-referenced Motion in response to the Petition of
TracFone Wireless, Inc. (TracFone) for Modification of Public Safety Answering Point
Certification Condition, modified December 23, 2008. At the time, TracFone was the
only wireless reseller to obtain an eligible telecommunications carrier (ETC) designation
and to become eligible to provide Lifeline service with federal support without the
ancillary statutory obligation to own at least a portion of the facilities used to provide
supported services. As discussed in the attached pleading, the regulatory landscape and
the Lifeline services market have changed, rendering our former Motion moot.

Please contact the undersigned should you have questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. W. Scott", is written over a horizontal line.

Colin W. Scott
Assistant Counsel

¹ Pa. PUC Motion for Reconsideration of the *TracFone Modification Order* and *Virgin Mobile
ETC Forbearance Order*, CC Docket No. 96-45 (filed April 3, 2009)

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Petition of TracFone Wireless, Inc.)	CC Docket No. 96-45
for Modification of Public Safety Answering)	DA No. 08-2779
Point Modification;)	
)	
Virgin Mobile USA, L.P. Petition)	CC Docket No. 96-45
for Forbearance and Designation as)	DA No. 07-4983
an Eligible Telecommunications Carrier in)	
the State of New York and the)	
Commonwealths of Pennsylvania and Virginia)	

**REQUEST OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
TO WITHDRAW MOTION FOR RECONSIDERATION**

Petitioner Pennsylvania Public Utility Commission (Pa. PUC) requests leave to withdraw its Motion for Reconsideration regarding the above-captioned matters. The Pa. PUC provides the following in support:

1. On March 4, 2009, the Pa. PUC filed an Answer (2009 Pa. PUC Answer)¹ to the TracFone Wireless, Inc. Motion for Partial Dismissal and Response to Ex Parte Submission (TracFone Motion).² In its Answer, the Pa. PUC asked the Federal Communications Commission (FCC or Commission) to, *inter alia*, rescind its 2005

¹ Pennsylvania Public Utility Commission Answer to the Petition of Tracfone for Modification of Public Safety Answering Point Modification, CC Docket No. 96-45 (filed March 4, 2009).

² *TracFone Wireless, Inc. Motion for Partial Dismissal and Response to Ex Parte Submission*, CC Docket No. 96-45 (filed March 2, 2009).

Forbearance Order,³ which enabled wireless resellers to obtain eligible telecommunications carrier (ETC) designation and be eligible to provide federal Lifeline support service without the ancillary statutory obligation to own at least a portion of the facilities used to provide supported services. The Pa. PUC contended that the predictive effect of the 2005 *Forbearance Order* was not, in 2009, what was anticipated in 2005.⁴

2. On April 3, 2009, the Pa. PUC sought reconsideration or clarification (2009 Pa. PUC Motion) of the *TracFone Modification Order* and the *Virgin Mobile ETC Forbearance Order*⁵ released by the Commission on March 5, 2015 premised, in considerable part, on the FCC's 2005 *Forbearance Order*.⁶ The *TracFone Modification Order* allowed TracFone, a reseller of wireless service, to "self-certify" that its wireless Lifeline service delivered 911 calls and Enhanced 911 (E911) calls to the Public Safety Answering Points (PSAPs) in any state where TracFone had an ETC designation under Section 214 of the Telecommunications Act of 1996 (TA-96) that reflected the FCC's

³ *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(1)(A) and 47 C.F.R. 54.201(i)*, Docket No. 96-45 (September 8, 2005) at ¶ 6, n. 23 (2005 *Forbearance Order*).

⁴ 2009 Pa. PUC Answer, CC Docket No. 96-45, at 10 (filed March 4, 2009) ("The vast gap between regulatory expectations in 2005 and TracFone's 2009 facts warrant revisiting [the 2005 *Forbearance Order*].").

⁵ *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order (*TracFone Modification Order*), 24 FCC Rcd. 3375 (2009); *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(a)* (*Virgin Mobile ETC Forbearance Order*), 24 FCC Rcd. 3381, (2009).

⁶ Pennsylvania Public Utility Commission Motion for Reconsideration of the *TracFone Modification Order* and *Virgin Mobile ETC Forbearance Order*, CC Docket No. 96-45 at 3 and n. 6 (filed April 3, 2009).

2005 Forbearance Order. The Virgin Mobile ETC Forbearance Order granted similar relief.

3. The Commission has not issued an order addressing the 2009 Pa. PUC Motion.

4. In its recently filed Reply Comments⁷ to the FCC Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) included in the FCC's Fourth Report and Order adopted November 16, 2017 (*2017 FCC Order*),⁸ the Pa. PUC presented new facts and corresponding argument that substantiate the Pa. PUC's current opposition to the Commission's pending proposal to reverse the *2005 Forbearance Order* and limit Lifeline support to facilities-based providers., a position contrary to that set forth in the 2009 Pa. PUC Answer and the 2009 Pa. PUC Motion.

5. The change in circumstances justifying the Pa. PUC's reversal of its opposition to the *TracFone Modification Order* and the *Virgin Mobile ETC Forbearance Order* set out in the 2009 filings support this request to withdraw are more fully set forth in the Reply Comments. Accordingly, the Pa. PUC seeks to withdraw that request because the Pa. PUC no longer supports the position expressed in its 2009 pleadings that

⁷ Reply Comments of the Pennsylvania Public Utility Commission, WC Docket Nos. 17-287 *et al.*, filed March 23, 2018 (Pa. PUC Reply Comments).

⁸ *In the Matter(s) of Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (FCC 17-155) (released December 1, 2017).

it is in the public interest to discontinue Lifeline support for non-facilities-based Lifeline services.

6. At the time of the *2009 Pa. PUC Motion*, TracFone was the first wireless reseller to obtain an ETC designation, through the FCC, making it eligible to provide federal Lifeline supported services without the obligation to own at least a portion of the facilities used to provide such services. The *2005 Forbearance Order* subsequently applied to other wireless resellers along with considerable changes in the requirements for wireless reseller providers of Lifeline have demonstrated that the *2005 Forbearance Order* has produced positive consumer results.

7. Following the *TracFone Modification Order*, the FCC granted additional non-facilities-based carriers forbearance of the facilities requirement on a case-by-case basis until it granted blanket forbearance in 2012.⁹

8. In fact, the Lifeline provider landscape has changed markedly since 2005, due in large part to the Lifeline service provided by wireless resellers in their capacity as competitive ETCs (CETCs).¹⁰ As of 2015, incumbents received \$166 million in revenues compared to \$1.342 billion received by CETCs. CETCs now receive about 89% of the claim support revenues from the Lifeline program. In comparison, back in 2000,

⁹ *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

¹⁰ *2016 Joint Monitoring Report*, Docket No. 96-45 (2016) (*2016 Joint Monitoring Report*) at 16, Table 2.4.

incumbent carriers received almost 99% of such revenues. While CETCs consist of wireline and wireless providers, Table 2.5 from the Commission's *2016 Joint Monitoring Report* shows that the vast majority of providers receiving Lifeline revenues are wireless resellers.¹¹

9. The information contained in the Commission's *2016 Joint Monitoring Report* shows that reinstating the statutory mandate for providers to own facilities as a precondition to supplying Lifeline supported services could greatly reduce the number of providers of Lifeline service and, in turn, the number of consumers who currently benefit from the Lifeline program.¹²

10. The expansion of Lifeline services and the minimum requirements for wireless reseller providers of Lifeline as a result of Commission policy initiated in the *2005 Forbearance Order* has facilitated the subscription of 11.3 million federal Lifeline subscribers, with more than 75% of low-income families in the program use non-facilities-based wireless service. While the Pa. PUC will not have enrollment totals for calendar year 2017 until June 2018, as of December 2016 there were 508,486 total Lifeline subscribers in Pennsylvania. Of those subscribers, 418,200, or 82%, received service through wireless resellers, while 90,286, or 18%, were enrolled with facilities-based providers (wireline and wireless). A reversal of the *2005 Forbearance Order* reflected in the Pa. PUC's 2009 filings would produce a result that negatively

¹¹ *2016 Joint Monitoring Report* at 27, Table 2.5. See also Pa. PUC Reply Comments at 21-22.

¹² *Id.*

impacts not only Pennsylvania Lifeline consumers but a vast number of Lifeline consumers nationwide.

11. In determining whether to retain the forbearance that currently allows non-facilities-based ETCs to receive Lifeline support, the Commission must account for the way in which consumers want to have service delivered. Clearly, the data shows that that consumer demand for wireless Lifeline services provided by resellers exists, and the Lifeline program should reflect it.

12. At this point in the evolution of the Lifeline program, shifting support to facilities-based carriers would seem to undermine the purpose of the program and dramatically reduce subscriptions by qualified consumers, particularly those served by wireless resellers. Moreover, the affordability of Lifeline service from facilities-based wireless providers in Pennsylvania—even with a Lifeline subsidy—is uncertain because these providers often require a contract for monthly service, purchase of equipment, and upfront or recurring fees.

13. Therefore, the changes to the Lifeline market, the service offerings available through non-facilities-based wireless carriers, and the needs of Lifeline customers over the last ten years amply support the Pa. PUC's change in its 2009 position opposing the FCC's forbearance to allow non-facilities-based wireless ETCs to receive federal support for the provision of Lifeline services.

WHEREFORE, in light of the foregoing substantial change in circumstances from 2009 to the present, the Pa. PUC respectfully requests that the Commission grant the Pa. PUC request to withdraw its 2009 Pa. PUC Motion.

**THE COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

By its Attorney and Staff

/s/ Colin W. Scott
Colin W. Scott
Pa. Bar ID No. 311440
colinscott@pa.gov

P.O. Box 3265
Harrisburg, PA 17105-3265
717-787-5000

Dated: March 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have on this day provided an electronic copy of the Pennsylvania Public Utility Commission (Pa. PUC) Motion for Reconsideration in the above-captioned *March Orders* released March 5, 2009 in Docket No. 96-45. I also hereby certify that I have provided a copy to each party admitted to participate in the agency proceeding and on the Petitioners *TracFone* and *Virgin Mobile* herein, via United States Postal Service, first-class mail, in envelopes addressed as indicated below, and I caused the same to be deposited in a receptacle of the United States Postal Service.

Ms. Marlene Dortch Office Of The
Secretary Federal Communications
Commission 445 12th Street S. W.
Washington, DC 20554
marlene.dortch@fcc.gov

Best Copy & Printing
445 12th Street S. W.
Washington, DC 20554
bcpiweb.com

Ms. Carol Pomponio
Federal Communications Commission
Room 5 B550
445 12th Street S. W.
Washington, DC 20554
carol.pomponio@fcc.gov

Mr. Robert McDowell
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554
robert.mcdowell@fcc.gov

Mr. David Duarte
Federal Communications Commission
Room 5B 441
445 12th Street S. W.
Washington, DC 20554 20554
david.duarte@fcc.gov

Mr. Michael Copps
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554
michael.copps@fcc.gov

Mr. Jonathan Adelstein
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554
jonathan.adelstein@fcc.gov

Mr. Scott Deutchmann
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554
scott.deutchmann@fcc.gov

Mitchell F Brecher Esquire
Greenberg Traurig LLP
2101 L Street NW, Suite 1000
Washington, DC 20037
brecher@gt.law.com

Jennifer McKee
Federal Communications Commission
Room 5 B550
445 12th Street S. W.
Washington, DC 20554
jennifer.mckee@fcc.gov

Scott Bergman
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554
scott.bergman@fcc.gov

Patrick Kane
PEMA
2605 Interstate Drive
Harrisburg, PA 17110
patrkane@state.pa.us

Chief Barbara A. Lazore
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655
abero@srmt-nsn.gov

Charles A. Acquard, Executive Director
National Association of
State Utility Consumer Advocates
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
charlie@nasuca.org

Antoinette Cook Bush
Skadden Arps Slate Meagher &
Flom LLP
1440 New York Avenue
Washington, DC 20005
antoinett.bush@skadden.com

Nicholas Alexander
Federal Communications
Commission 445 12th Street S. W.
Washington, DC 20554
nicholas.alexander@fcc.gov

Angela E. Giancarlo
Federal Communications
Commission 445 12th Street S. W.
Washington, DC 20554
angela.giancarlo@fcc.gov

Robert Wentzel
PEMA
2605 Interstate Drive
Harrisburg, PA 17110
rwentzel@state.pa.us

Jonathan Banks
United States Telecom Association
607 14th Street, NW, Suite 400
Washington, DC 20005

Gerald A. Norlander, Executive Director
Louis Manuta, Staff Attorney
Public Utility Law Project of New
York, Inc. 194 Washington Avenue,
Suite 420 Albany, NY 12210
ganorlander@pulp.tc

Ken McEldowney
Consumer Action
PO Box 70037
Washington, DC 20024

National Emergency Number Assoc.
James R. Hobson
Miller & Van Eaton,
PLLC Suite 1000
1155 Connecticut Avenue, NW
Washington, DC 20026-4320
jhobson@millervaneaton.com



Colin W. Scott
Assistant Counsel
Attorney ID #311440
Law Bureau
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
Tel: (717) 787-5000

DATE: March 30, 2018